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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 SAM DONAGHE,

10 Plaintiff,

11 No. C16-5123 BHS-KLS

12 v.

13 DORIAN DIAZ, et al.,

14 Defendants.

15 **REPORT AND RECOMMENDATION**
16 **Noted For: September 30, 2016**

17 On March 17, 2016, the Court declined to serve Plaintiff Sam Donaghe's civil rights
18 complaint (Dkt. 7) because of several noted deficiencies. Dkt. 8. However, the Court granted
19 Mr. Donaghe leave to file an amended complaint to cure the deficiencies or to show cause why
20 his complaint should not be dismissed by April 15, 2016. Dkt. 8. Mr. Donaghe has failed to file
21 an amended complaint or respond to the Court's Order.

22 The undersigned recommends that this action be dismissed without prejudice prior to
23 service because plaintiff has failed to state a claim under 42 U.S.C. § 1983 and has failed to
24 properly respond to this Court's Order.

25 **DISCUSSION**

26 Plaintiff is a resident of the Special Commitment Center (SCC) in Steilacoom,
27 Washington. In his § 1983 complaint, he seeks to sue Dorian Diaz, SCC Investigator; Cathi
28 Harris, former SCC Superintendent; Heather Sacha, SCC IT Supervisor; and, "Corporate

1 Monopoly.” Dkt. 7. He sues for the theft and destruction of his personal computer and
2 “irreplaceable pro se legal work product” by unidentified SCC staff on “June 12, 2012 and
3 subsequent dates.” He further claims that SCC staff members Diaz and Jeff Cutshaw violated his
4 rights when they seized him, searched his room, and searched his computer. He contends that
5 Defendant Sacha lied about the reasons the computer was taken and Defendant Harris, as
6 supervisor, was responsible for Defendant Diaz’s actions. *Id.*, at 2-3.
7

8 Plaintiff further alleges that computers allowed at the SCC are “severely modified” and
9 that SCC residents are forced to buy computers from only one company. He alleges that SCC
10 staff is allowed to review and copy all of his legal work and that their access to his medical
11 records “violates HIPPA law.” *Id.*, at 4. He also alleges that defendants have violated his “zone
12 of privacy.” *Id.*

13 A review of the Court’s records reflect that plaintiff previously brought a claim alleging
14 that in December 2013, SCC staff destroyed his computer and computer equipment. Plaintiff
15 voluntarily withdrew that complaint and the case was dismissed without prejudice. Dkt. 15 in
16 Case No. 13-6040 RJB.
17

18 DISCUSSION

19 Plaintiff’s complaint is brought under § 1983. To state a claim under § 1983,
20 a plaintiff must allege facts showing (1) the conduct about which he complains was committed
21 by a person acting under the color of state law; and (2) the conduct deprived him of a federal
22 constitutional or statutory right. *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). In
23 addition, to state a valid § 1983 claim, a plaintiff must allege that he suffered a specific injury as
24 a result of the conduct of a particular defendant, and he must allege an affirmative link between
25 the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

1 **A. Statute of Limitations**

2 In his complaint, dated February 16, 2016, plaintiff seeks relief for the theft of his
3 computer that allegedly occurred four years ago in 2012.

4 The Civil Rights Act, 42 U.S.C. § 1983, contains no statute of limitations. As such, the
5 statute of limitations from the state cause of action most like a civil rights act is used. In
6 Washington, a plaintiff has three years to file an action. *Rose v. Rinaldi*, 654 F.2d 546 (9th
7 Cir.1981); RCW 4.16.080(2). Federal law determines when a civil rights claim accrues.
8 *Tworivers v. Lewis*, 174 F.3d 987, 991 (9th Cir.1999). A claim accrues when the plaintiff knows
9 or has reason to know of the injury which is the basis of the action. *Kimes v. Stone*, 84 F.3d
10 1121, 1128 (9th Cir.1996); see also *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir.2001), quoting
11 *Tworivers*, 174 F.3d at 992. The proper focus is upon the time of the discriminatory acts, not
12 upon the time at which the consequences of the acts became most painful. *Abramson v. Univ. of
13 Hawaii*, 594 F.2d 202, 209 (9th Cir.1979). Although the statute of limitations is an affirmative
14 defense that normally may not be raised by the court *sua sponte*, it may be grounds for *sua
15 sponte* dismissal of an *in forma pauperis* complaint where the defense is complete and obvious
16 from the face of the pleadings or the court's own records. See *Franklin v. Murphy*, 745 F.2d
17 1221, 1228–30 (9th Cir.1984).

18 From the allegations stated in his complaint, it appears plaintiff had actual notice in June
19 2012, of the search and alleged theft of his computer and legal work. He did not, however, file
20 his complaint until February 16, 2016, approximately three years and eight months after the loss
21 of his computer and legal work. Therefore, plaintiff was ordered to show cause why his claims
22 are timely and why they should not be dismissed. He has failed to do so.

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1 **B. Access to Courts**

2 In *Bounds v. Smith*, 430 U.S. 817 (1977), the United States Supreme Court held that
 3 inmates possess a fundamental constitutional right of access to courts in order to contest the fact,
 4 duration and conditions of their confinement. *Id.* at 822-23. In *Lewis v. Casey*, 518 U.S. 343
 5 (1996), the Supreme Court explained that the “Constitution does not require that prisoners be
 6 able to conduct generalized research,” but rather, “[t]he tools it requires to be provided are those
 7 that the inmates need in order to attack their sentences, directly or collaterally, and in order to
 8 challenge the conditions or their confinement.” *Id.* at 355, 360.

9
 10 To establish a violation of the right of access to courts, plaintiff must plead facts showing
 11 that he has suffered actual injury. Actual injury results from “some specific instances in which
 12 an inmate was actually denied access to the courts.” *Sands v. Lewis*, 886 F.2d 1166, 1170-71
 13 (9th Cir. 1989). This allegation of injury applies equally to civil detainees. *See e.g., Jones v.*
 14 *Blanas*, 393 F.3d 918 (9th Cir. 2004) (applying “actual injury” requirement in access to courts
 15 claim of civil detainee).

16
 17 Plaintiff alleges only that the computers at SCC are “severely modified.” He does not
 18 allege how this violates his constitutional rights or how this has caused him actual injury.
 19 Plaintiff was given leave to amend his complaint to add allegations specific to this claim but he
 20 has failed to do so.

21 **C. Corporate Monopoly**

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 23 Plaintiff alleges SCC residents are forced to buy computers from only one company and
 24 names “Corporate Monopoly One participant to be named” as a proposed defendant. As noted
 25 above, a Section 1983 claim can only be brought against a person acting under color of state law.
 26 Plaintiff provided no facts from which it could be discerned that his constitutional rights are

1 being violated by any state actor. He was granted leave to show cause why this claim should not
2 be dismissed, but he has failed to do so.

3 **D. Privacy – Legal Work and Medical Records**

4 Although his complaint is unclear, it appears plaintiff is complaining that defendants'
5 access to his mail and medical records violates his constitutional right to privacy. He also claims
6 that defendants' handling of his medical records violates the Health Insurance Portability and
7 Accountability Act (HIPAA).

8 As to his legal work, plaintiff alleges that SCC staff is allowed to review and copy all of
9 his legal work. He does not identify when or where this occurred, what was reviewed, who
10 reviewed what, or how this has violated his constitutional rights. As to his medical records,
11 plaintiff alleges only that defendants' access to his medical records violates "HIPPA [sic] law."
12 Plaintiff has no private right of action under HIPAA for a claim against SCC for disclosure or
13 use of his medical records. *See, e.g., Seaton v. Mayberg*, 610 F.3d 530, 533 (9th Cir. 2010)
14 (citing *Webb v. Smart Document Solutions, LLC*, 499 F.3d 1078 (9th Cir. 2007)). In addition,
15 plaintiff generally has no constitutionally protected expectation of privacy in his treatment
16 records when the state has a legitimate penological interest in access to the records. *Id.* at 534.

17 Plaintiff was granted leave to plead additional facts regarding these claims, but he has
18 failed to do so.

19
20 **CONCLUSION**

21 This Court granted plaintiff an opportunity to state a viable constitutional claim and
22 provided him with sufficient instructions to allow him to do so. He has failed to do so and
23 therefore, this action should be dismissed.

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1 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
2 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
3 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
4 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the
5 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
6 **September 30, 2016**, as noted in the caption.
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8 **DATED** this 14th day of September, 2016.

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12 Karen L. Strombom
United States Magistrate Judge
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